



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 19, 1996

Ms. Linda Wiegman
Supervising Attorney
Office of the General Counsel
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756-3199

OR96-1197

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 100809.

The Texas Department of Health (the "department") received a request for information relating to retreats taken by the department's Office of General Counsel since March 31, 1996. You claim this information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.¹ Thus, under section 552.103(a), a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, *writ ref'd n.r.e.*); Open Records Decision No. 551 (1990) at 4.

¹Section 552.103(a) excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

You state that the requestor filed suit against the department for age discrimination on June 10, 1996. In this instance, you have made the requisite showing that litigation is pending. However, as you have not explained how the requested information relates to the pending litigation, nor is it apparent on the face of the documents at issue, we conclude that you have failed to make the requisite showing that this information relates to the pending litigation. Consequently, you must release the requested information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese". The signature is fluid and cursive, with a large initial "T" and a long horizontal stroke at the end.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 100809

Enclosures: Submitted documents